
UTAH LABOR COMMISSION

JOY ANDREWS,

Petitioner,

vs.

WASHINGTON COUNTY SHERIFF,

Respondent.

**ORDER DENYING
RECONSIDERATION**

CLERICAL CORRECTION

Case No. 8-08-0063

Joy Andrews asks the Utah Labor Commission to reconsider its prior decision affirming dismissal of Ms. Andrews' charge of discrimination against Washington County Sheriff (hereafter referred to as the "County") for being untimely.

The Labor Commission exercises jurisdiction over this matter pursuant to Utah Code Annotated § 63G-4-302.

BACKGROUND AND ISSUES PRESENTED

On November 27, 2006, the County terminated Ms. Andrews from her employment. Thereafter, Ms. Andrews initiated a review process of that decision through the County's internal grievance process. The County completed its review process and issued its final decision on September 5, 2007. Ms. Andrews filed a claim with the Utah Antidiscrimination and Labor Division on November 9, 2007, charging that Washington County Sheriff terminated her because of her gender.

The UALD dismissed Ms. Andrews' charge as untimely and she requested an evidentiary hearing with the Adjudication Division. Judge Luke dismissed Ms. Andrews' charge based on her failure to file her charge within the statutory time limit of 180 days. Ms. Andrews then filed a motion for review of that decision with the Commission, arguing that her charge was filed within 180 day from the County's final decision, since she was required, under Utah law, to exhaust all administrative remedies before pursuing judicial review. In the alternative, she argued for equitable tolling of the deadline. The Commission affirmed Judge Luke's dismissal, finding that Ms. Andrews failed to timely file her charge of discrimination and declined to apply equitable tolling under the facts of the case.

In asking the Commission to reconsider its decision, Ms. Andrews renews her previous arguments. The County also asks the Commission to correct a factual error that was made in the Commission's findings of fact, wherein it was stated that the county's final decision affirming Ms. Andrews' employment termination was dated September 14, 2007, although the decision was actually dated September 5, 2007.

DISCUSSION

The Commission first recognizes that there was an error in the Commission's previous statement of the facts, wherein it stated the County issued its final decision on September 14, 2007. The County issued its final decision on September 5, 2007, and the Commission hereby modifies that fact from its previous Order Affirming the ALJ's Decision.

The Commission next turns to Ms. Andrews' renewed arguments on the timeliness of her charge. Section 34A-5-107 of the Utah Antidiscrimination Act outlines the procedures for filing a claim of discrimination under that chapter, stating that "[a] request for agency action made under this section shall be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred." § 34A-5-107(1)(c). The Commission has reviewed Ms. Andrews' motion for reconsideration and does not find any merit in her arguments. Ms. Andrews was terminated from her employment on November 27, 2006, and did not file her claim of discrimination until November 9, 2007, more than 180 days after the alleged discriminatory or prohibited employment practice occurred. Thus, the Commission finds that according to the plain language of the statute, Ms. Andrews' charge of discrimination was untimely filed.

In support of her request for equitable tolling, Ms. Andrews appears to be arguing that the filing deadline should be equitably tolled because she had only been faithfully following the internal grievance procedures set up by Washington County to exhaust her administrative remedies before filing with the UALD. She contends that at each step of her internal grievance claim, she met every deadline for filing her petitions, which shows that she did not inexcusably and unreasonably sleep on her rights. However, it bears noting that even if this argument were availing, Ms. Andrews' assertions are incorrect. Despite her earlier claim that, in compliance with the County's procedures, she filed her complaint with UALD "within thirty days of the issuance of a written decision of the county career service council," Ms. Andrews did not file her complaint with UALD until November 9, 2007, more than 30 days after the county issued its final written decision on September 5, 2007. Thus, Ms. Andrews not only missed the deadline for filing a claim of discrimination set forth under the Utah Antidiscrimination Act, but also the County's deadline set forth under § 17-33-10(2). The Commission affirms its previous decision that the facts of this case do not warrant equitable tolling of the 180 day filing requirement.

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ORDER

The Commission modifies the findings of fact from its Order to represent that the County issued its final decision on September 5, 2007, and reaffirms its previous decision, thereby denying Ms. Andrews' request for reconsideration.

Dated this 17th day of February, 2009.

Sherrie Hayashi, Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.